BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 _____ Petitioners: **PETER C. DROSTE, THE PETER C. DROSTE CHILDREN'S TRUST, BRUCE F. DROSTE, AND THE BRUCE F. DROSTE CHILDREN'S TRUST,** v. Respondent: **PITKIN COUNTY BOARD OF EQUALIZATION.**	**Docket Nos.: 50830, 50831, 50832, and 50833**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on June 26, 2009, Diane M. DeVries and Karen E. Hart presiding. Petitioners were represented by Wayne B. Schroeder, Esq. Respondent was represented by Christopher G. Seldin, Esq. Petitioners are protesting the 2008 actual value of the subject properties.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

Docket No. 50830: Pitkin County Schedule Nos. R017398 & R017399
Docket No. 50831: Pitkin County Schedule Nos. R017401 & R017403
Docket No. 50832: Pitkin County Schedule Nos. R017400 & R017402
Docket No. 50833: Pitkin County Schedule Nos. R017404 & R017405

The subject properties consist of eight, 35-acre vacant land tracts located approximately four miles northwest of the City of Aspen.

The subject properties were part of an approximately 925-acre ranch which included two residences and a barn. The ranch was a multi-use property combining residential uses of the homes with limited commercial use for snowmobile rentals in the winter and horseback riding in the summer. In December 1999 a $7,500,000.00 conservation easement was sold on 500 acres of the

original ranch property. On January 1, 2000, the owners ceased commercial operations as those activities were not permitted under the conservation easement terms.

On September 12, 2000, the remaining property was deeded as ten individual parcels to family members and family trusts. As of January 1, 2001, the classification of the parcels that did not have a dwelling was changed to vacant future development land. As of January 1, 2008 the remaining properties existed as nine parcels, one of which is larger than 35 acres. The eight, 35-acre parcels are the subject of this appeal.

The eight subject properties were originally zoned AFR-10, which allows one home site per 10 acres. In 2004, the properties were down-zoned to Low Impact Residential (LIR), which allows one home per 35-acre site. Petitioners have tried to develop the property almost continuously since their ownership. Two development applications have been turned down. Petitioners' 2004 application for the development of ten homesites is still pending as of the assessment date.

Petitioners' witness, Mr. Robert Ritchie, a licensed real estate broker, developer, and builder in Aspen and the Roaring Fork Valley testified that the new zone district, LIR, in actuality requires 80 acres per site. All development applications have been denied.

Mr. Ritchie has been the listing agent for the subject properties. In the summer or fall of 2004, the subject properties were listed for $40,000,000.00. In the winter of 2004 or spring of 2005, the subject properties were listed as nine, 80-acre homesites for $20,000,000.00, with approvals to be completed by the buyer. There was a qualified land use application in process with the county that should have been allowed under the code in place at the time. The subject properties were under contract from 2005 to beyond January 1, 2008. The contract failed as the land use approvals were not approved. Extreme efforts were made to obtain the approvals. It was envisioned that the approvals would be obtained within 18 months. The contract was for about $24,000,000.00 with a life estate for Mr. Droste to live on one of the properties.

Petitioners presented no comparable sales. Mr. Ritchie has been unable to find any sales with the LIR zoning and believes there is little or no value for the subject properties without development. Mr. Ritchie testified that Pitkin County officials make up new rules for development as they go, they will not follow the law, and they have no intention of allowing the subject properties to be developed. Therefore, he believes the adjacent conservation easement valued at $102.00 per acre by the assessor, is a good indication of value for the subject properties. Without development rights, he believes the subject properties should be valued at $102.00 per acre with a $25,000.00 adjustment for lack of a conservation easement, or $53,560.00 for the entire 280 acres.

Petitioners are requesting a 2008 actual value of $6,695.00 for each of the subject property lots.

Respondent's witness, Mr. Lawrence C. Fite, Chief Appraiser with the Pitkin County Assessor's office and a Certified General Appraiser, testified that the subject properties were valued using the vacant land discount method. The level of value date is June 30, 2006 with an assessment date of January 1, 2008. He looked at the properties as part of an active land use application. Mr.

Fite established the market value of the lots as finished development lots, deducted the value of infrastructure, determined the number of years to sell out, and then discounted the value.

Mr. Fite testified regarding the zoning and development application for the subject properties. The LIR zone district allows one house per 35-acre lot, but the properties have to go through the Growth Management Quota System (GMQS), which applies to the entire county. There is a planned unit development (PUD) option in which the applicant can choose to use 80-acre parcels that do not require the GMQS. After the LIR zone change, the Drostes filed an 80-acre development application. They can use acreage from the conservation easement to obtain a total of 80 acres for the development. The LIR zone district was created effective January 2004. There have never been any development approvals of LIR-zoned properties but there have been no applications presented to the county for approval other than the subject properties. Mr. Fite admitted there is a question as to whether the PUD option may be used by the Drostes. The PUD option calls for a minimum lot size of 80 acres and common ownership of the entirety of the unsubdivided parcel and adjacent parcels on January 16, 2000.

As of January 1, 2008, the application was moving forward and the applicant was requested to supply additional information, but there were no development approvals in place. Each of the subject parcels was under the development application. The application was revised to ten sites, including the eight subject properties and two sites that are in another location. Mr. Fite believes Petitioners must think there is a reasonable future use of development of the properties due to their filing of a development application.

Mr. Fite testified that the subject properties were actively marketed for sale during the data gathering period and there was an active land use application. These facts led him to believe that there was a reasonable future use as developed vacant lots.

Respondent presented an indicated value of $1,055,000.00 per lot for the subject properties based on the market approach.

Respondent presented six comparable sales ranging in sales price from $750,000.00 to $4,000,000.00 and in size from 21 acres to 45.59 acres. After adjustments were made for time, location, development rights, views, and general utility, the sales ranged from $1,755,000.00 to $3,431,000.00. The zoning of the comparables at the time of sale was unknown. Sale 1 did not have development rights in place at the time of sale. Sales 2 and 3 were not subdivided and did not have 1041 approvals. Sale 4 was a platted subdivision. Sale 5 had 1041 approval for a single family home. Sale 6 is a subdivided property.

Mr. Fite testified that the marketability of a property rises dramatically once approvals are in place. He concluded to a value of $2,500,000.00 as unadjusted finished saleable lots.

Mr. Fite next derived an adjusted value of the subject properties by deducting allowable expenses. Mr. Fite obtained estimates from conversations with developers, real estate appraisers, and road engineers that resulted in a 25% to 40% range for hard costs to develop the properties. Due to the subject location in a mountain area, he used the upper end of the range at 40% for direct, hard costs. He concluded to an adjusted value of $1,500,000.00 per lot.

The next step is the vacant land discounting process. There have been numerous new subdivisions in recent years and historically there is an extremely high demand but a limited supply of lots available for sale due to the strict land use approval process. Most sellout periods have been one to three years. He estimated a five year absorption period to account for obtaining development approvals. Mr. Fite used a discount rate of 12.57% rounded to 13% which resulted in a present worth value of $1,055,000.00 per lot.

The final step is to establish a raw land value. Respondent presented six large tract land sales, ranging in time adjusted sales prices from $7,715.00 per acre to $173,349.00 per acre and in size from 106 acres to 2,490 acres. Sale 1 and 2 had no development approvals. Sale 3 was not subdivided. Sale 4 was not subdivided but has a minor structure. Sale 5 is located in the Red Mountain area. Mr. Fite did not use these sales to establish the subject properties value, only to make sure the discounted value did not fall below the raw land value. Based on an 80-acre tract size, Mr. Fite concluded that the discounted value of the subject properties at $1,055,000.00 per site or roughly $13,188.00 per acre was reasonable and did not fall below the raw land value of the subject properties.

Respondent assigned the following actual values to the subject properties for tax year 2008:

Schedule Number	Value
R017398	$1,250,000.00
R017399	$1,250,000.00
R017401	$1,250,000.00
R017403	$1,250,000.00
R017400	$1,250,000.00
R017402	$1,250,000.00
R017404	$1,250,000.00
R017405	$1,250,000.00

There was much testimony regarding the zoning of the properties which was referred to in the hearing as LIR, LIR35, and LIR80. After reviewing the documents presented in Respondent's Exhibit B, the Board clarifies for the record that the subject properties are zoned LIR, which allows a minimum lot size of 35 acres and approval through GMQS (sometimes referred to as LIR35). Additionally, there is a PUD option that allows an 80-acre minimum lot size (sometimes referred to as LIR80).

Sufficient probative evidence and testimony was presented to prove that the subject properties were incorrectly valued for tax year 2008.

Petitioners argue that the subject properties are not an approved subdivision and there is no possibility of approval. Therefore the value should be the same as the neighboring conservation easement due to the non-developability of the subject properties.

Petitioners presented no comparable sales to value the subject properties. It is not an acceptable appraisal method to use the assessor's value of the conservation easement lands to develop a value for the subject properties.

Respondent argues that the subject properties were marketed and Petitioners' actions indicate they believe the subject properties are developable, therefore the assumption that the subject properties will be developed is reasonable. The Board agrees.

In *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P.2d 146, 153 (Colo. 1988), the Colorado Supreme Court held that "reasonable future use is relevant to a property's current market value for tax assessment purposes." The court explained that Colorado tax statute "does not preclude consideration of future uses." The court differentiated between "reasonable future uses" and "speculative future uses" that the court said could not be considered in determining market value for property tax purposes.

As of the assessment date, an active development application was in place. The development application and continued marketing of the subject properties during the base period suggests development is a "reasonable future use" rather than a "speculative future use."

Even if the Board were to determine that the subject properties should be valued as 35-acre tracts and not development lands, a review of the unplatted comparable sales shown on Bates page 00067 of Respondent's Exhibit B that have some development issues (Sales 1, 2, and 3) indicate a higher value than presented by Respondent's witness.

The Board concludes that the 2008 actual value of the subject properties should be reduced to Respondent's recommended value of $1,055,000.00 per parcel.

ORDER:

Respondent is ordered to reduce the 2008 actual value of the subject properties to:

Schedule Number	Value
R017398	$1,055,000.00
R017399	$1,055,000.00
R017401	$1,055,000.00
R017403	$1,055,000.00
R017400	$1,055,000.00
R017402	$1,055,000.00
R017404	$1,055,000.00
R017405	$1,055,000.00

The Pitkin County Assessor is directed to change his records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S..

DATED and MAILED this 21st day of October 2009.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Karen E. Hart

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Heather Flannery

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS